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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

File: [redacted] Office: GUANGZHOU, CHINA Date: JAN 03 2002

IN RE: Applicant: [redacted]

Application: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. 1182(i)

IN BEHALF OF APPLICANT:

[redacted]

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Guangzhou, China, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of China who was found by a consular officer to be inadmissible to the United States under section 212(a)(6)(E) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(6)(E), for having paid a smuggler $30,000 in order to smuggle her husband into the United States on or about 1990. The applicant's spouse obtained status as a lawful permanent resident in 1994 and the applicant seeks the above waiver in order to obtain an immigrant visa and travel to the United States to reside.

The officer in charge concluded that the applicant had failed to submit any evidence of contriteness or remorse for having assisted in the smuggling of her husband. The officer in charge also considered the applicant inadmissible to the United States under section 212(a)(6)(C) of the Act, 8 U.S.C. 1182(a)(6)(C), for fraud or willful misrepresentation. The officer in charge then considered and denied the applicant's waiver request under section 212(i) for failing to establish that extreme hardship would be imposed upon a qualifying relative.

The record contains no evidence to support the officer in charge's finding of inadmissibility under section 212(a)(6)(C) of the Act. The applicant does not, therefore, require a section 212(i) waiver.

Issues of inadmissibility are to be determined by a consular officer when an alien applies for a visa abroad. In this case, the a consular officer found the applicant ineligible for admission as under section 212(a)(6)(E) as an alien smuggler. A waiver of this ground of inadmissibility is at the discretion of the Attorney General for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

Section 212(a) of the Act states:

> CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.- Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:
>
> * * *
>
> (6) ILLEGAL ENTRANTS AND IMMIGRATION VIOLATORS.-
>
> * * *

[redacted]

(E) SMUGGLERS.-

(i) IN GENERAL.-Any alien who, at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or try to enter the United States in violation of law is inadmissible.

(ii) SPECIAL RULE IN THE CASE OF FAMILY REUNIFICATION.- Clause (i) shall not apply in the case of an alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act of 1990), who was physically present in the United States on May 5, 1988, and is seeking admission as an immediate relative or under section 203(a)(2) (including under section 112 of the Immigration Act of 1990) or benefits under section 301(a) of the Immigration Act of 1990 if the alien, before May 5, 1988, has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law. (Emphasis added.)

(iii) WAIVER AUTHORIZED.- For provisions authorizing waiver of clause (i), see subsection (d)(11).

Subsection (d)(11) states:

(11) The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) in the case of any alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of removal, and who is otherwise admissible to the United States as a returning resident under section 211(b) and in the case of an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 203(a) (other than paragraph (4) thereof), if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of the offense was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

On appeal, counsel states that the decision of the officer in charge made no mention of the documentation submitted regarding the

significant medical and psychological problems of the applicant's spouse. Counsel asserts that the spouse is suffering extreme and demonstrable hardships beyond mere family separation.

The record includes a letter in support of the applicant's spouse from the Fukien American Association, Inc. indicating that the applicant's spouse needs his wife in the United States to support him emotionally and financially. A physician's letter dated December 31, 2000 indicates that the applicant's spouse is currently on antidepressant and anxielytic medications and has been advised to have psychological therapy. The spouse's employer, a relative, a friend, and the couple's children each indicate that the applicant's spouse is suffering due to separation from his wife.

Although the applicant's spouse is a lawful permanent resident of the United States, he obtained that status as a result of his wife's violation of the law. In addition, the record reflects that at the time of her interview before a consular officer, the applicant did not know specifically where her husband resided. Both of her children are over the age of eighteen and reside with the applicant's brother, not their father. It is concluded that the applicant does not warrant a favorable exercise of the Attorney General's discretion.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. See Matter of T-S-Y-, 7 I&N Dec. 582 (BIA 1957). Matter of Ngai, 19 I&N Dec. 245 (Comm. 1984). Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.